

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In re:

BKY No. 2-50600 (RJK)

Invision of Duluth,  
Debtor.

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Randall L. Seaver,  
Plaintiff,

ADV No. 04-5027

v.

SLM Financial Corporation,  
Defendant.

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**ANSWER TO COMPLAINT**

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Defendant SLM Financial Corporation (“**Defendant SLM**”), as and for its Answer to the Complaint of Plaintiff Randall L. Seaver (“**Plaintiff**”), states and alleges as follows:

1. Defendant SLM admits the allegations contained in Paragraph 1 of the Complaint.
2. Defendant SLM admits the allegations contained in Paragraph 2 of the Complaint.
3. Defendant SLM admits the allegations contained in Paragraph 3 of the Complaint.
4. Defendant SLM admits the allegations contained in Paragraph 4 of the Complaint.
5. Defendant SLM denies the allegations contained in Paragraph 5 of the Complaint.
6. With respect to Paragraph 6 of the Complaint, Plaintiff realleges and incorporates

herein all of the Answers contained in the preceding paragraphs.

7. With respect to Paragraph 7:
  - a. Defendant SLM denies the allegations contained in the first sentence of Paragraph 7 of the Complaint.

- b. The allegations contained in the second sentence of Paragraph 7 of the Complaint characterize a written document to which no admission or denial is required. The document speaks for itself. To the extent that the second sentence of Paragraph 7 of the Complaint is deemed to state a factual allegation requiring admission or denial, Plaintiff denies the allegations contained therein.
- c. Upon information and belief, Defendant SLM forwarded funds to Invasion of Duluth (“**Debtor School**”) to be held in constructive trust for Thomas Kiminski (“**Borrower**”), a student enrolled for courses with Debtor School, and/or Defendant SLM.
- d. Upon information and belief, Borrower elected to withdraw from courses at Debtor School and requested that Debtor School “issue a full refund to [Defendant] SLM Financial account number 2096147 in the amount of [\$]10,650.00 Dollars as [Plaintiff] stated they would do if I withdraw from class prior to the 10<sup>th</sup> Full attended Day.” Attached as Exhibit A is a true and correct copy of the refund request sent by Borrower to Plaintiff’s representative, with a copy to Defendant SLM.
- e. Upon information and belief, Defendant SLM received a \$10,000 check from Debtor School (the “**Funds**”), representing the refund of Borrower’s funds that had been held in constructive trust by Debtor School. Defendant SLM made multiple unsuccessful attempts to deposit the same.
- f. Upon information and belief, Commerce Bank of Cherry Hill, New Jersey would not accept the Funds check after it had twice been returned for insufficient funds, and advised Defendant SLM that said check would have to be re-issued.
- g. Upon information and belief, Defendant SLM did not receive a post-petition payment of the Funds from Plaintiff. However, even assuming such payment was credited, the Funds check represented a return of funds held in  
constructive trust by Debtor School for Borrower and which Borrower  
authorized for return to Defendant SLM.
- h. In the event Defendant SLM is compelled to return the Funds to Plaintiff in connection with Borrower’s enrollment, Borrower will be liable for such obligation as the student loan borrower.
- 8. Defendant SLM denies the allegations contained in Paragraph 8 of the Complaint.

### **AFFIRMATIVE DEFENSES**

- 9. Plaintiff’s Complaint fails to state a claim upon which relief can be granted.

10. Debtor School held the Funds in constructive trust for Borrower, subject to his continued enrollment in Debtor School, and/or in constructive trust for Defendant SLM, who originally issued the Funds to Debtor School.

11. The transfer of the Funds was intended by the Borrower to be a contemporaneous exchange for value given to the Borrower, a debtor of Defendant SLM.

12. Plaintiff transferred the Funds in the ordinary course of business affairs, and Defendant SLM accepted the Funds in the ordinary course of business affairs, and the transfer was made according to ordinary business terms.

13. The transfer of the funds was a bona fide payment of a debt by Borrower to Defendant SLM.

14. Plaintiff's damages, if any, were caused by the acts or omissions of third parties over whom Defendant SLM had no control and for whose acts it is not responsible.

15. Plaintiff's claims are barred, in whole or in part, by the doctrines of estoppel, waiver, and ratification.

16. Plaintiff's claims are barred because Plaintiff is not the real party in interest.

WHEREFORE, Defendant SLM respectfully requests that:

- A. The Court dismiss Plaintiff's claims with prejudice in their entirety;
- B. The Court deny Plaintiff's requests for relief in their entirety;
- C. The Court award Defendant SLM its attorney's fees, costs and disbursements herein; and
- D. The Court award such other and further relief as the Court deems just and equitable.

Dated: September 3, 2004.

**TREPANIER & MACGILLIS P.A.**

/s James C. MacGillis

By: \_\_\_\_\_  
Craig W. Trepanier      James C. MacGillis  
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**ATTORNEYS FOR DEFENDANT SLM  
FINANCIAL CORPORATION**

09/02/04 15:47 FAX 3178064959

Sallie Mae Legal

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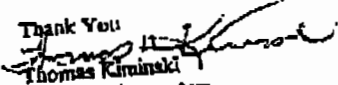
05/29/02 WED 14:51 FAX 7153827409

T KIMINSKI

Dear Gail  
Please refund 5000.00 Dollars to me (Thomas Kiminski) as Connecting point stated they would do should I withdraw from the class prior to the 10th full attended day. Also please issue a full refund to SLM financial account number 2066147 in the amount of 10650.00 Dollars as Connecting point stated they would do if I withdraw from class prior to the 10th Full attended Day

5/29/2002

Thank You

  
Thomas Kiminski  
2975 S Chicago Ave  
Superior WI. 54880

Copy sent to  
SLM Financial

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Calla

EXHIBIT A

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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**CERTIFICATE OF SERVICE VIA U.S. MAIL**

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STATE OF MINNESOTA    )  
                                  ) ss.  
COUNTY OF HENNEPIN    )

James C. MacGillis of the City of St. Paul, County of Ramsey, in the State of Minnesota, certifies that on the 3<sup>rd</sup> day of September, 2004, he served the annexed Answer to Complaint on the following attorney of record, by mailing to such person or attorney a copy thereof, enclosed in an envelope, postage prepaid, and by depositing the same in the post office at Commerce Station, Minneapolis, Minnesota directed to said attorney at his last known address listed below:

Randall L. Seaver, Esq.  
Fuller, Seaver & Ramette, P.A.  
12400 Portland Avenue South, Suite 132  
Burnsville, MN 55337

/e James C. MacGillis

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James C. MacGillis